

NO. PD-0504-20

IN THE COURT OF CRIMINAL APPEALS

AUSTIN, TEXAS

FILED
COURT OF CRIMINAL APPEALS
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STATE OF TEXAS v. APRIL WILLIAMS

ON APPEAL FROM THE FOURTH COURT OF APPEALS
SAN ANTONIO, TEXAS
TRIAL COURT CAUSE NO. 18-0874-CR-B

APPELLANT'S BRIEF

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NAMES OF THE PARTIES

Appellee has named the parties correctly.

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 <u>ISSUE 2:</u> The Fourth Court of Appeals did not review or come to a decision related to the Appellant's other two points of error, either of which would be dispositive. First, the trial court abused its discretion in not permitting the Defendant to permit her duress defense to the jury. Second, the trial court abused its discretion in allowing extraneous offenses in the guilt/innocence portion of the trial over Defendant's objection. This Court should uphold the reversal of the Appellant's conviction on these grounds. In the alternative, this Court should remand this case to the Fourth Court of Appeals for a ruling on these other two points of error.	
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STATEMENT REGARDING ORAL ARGUMENT

This Court has already denied oral argument in this matter.

ISSUES PRESENTED

ISSUE 1: In response to Issues 1-3 raised by Appellee's Brief, the Fourth Court of Appeals correctly determined that trial court abused its discretion in not allowing public scrutiny. The exclusion of Appellant's family from the courtroom was in direct violation of the Texas Constitution. This was a foundational issue, and no harm analysis is required for reversal.

ISSUE 2: The Fourth Court of Appeals did not review or come to a decision related to the Appellant's other two points of error, either of which would be dispositive. First, the trial court abused its discretion in not permitting the Defendant to permit her duress defense to the jury. Second, the trial court abused its discretion in allowing extraneous offenses in the guilt/innocence portion of the trial over Defendant's objection. This Court should uphold the reversal of the Appellant's conviction on these grounds. In the alternative, this Court should remand this case to the Fourth Court of Appeals for a ruling on these other two points of error.

STATEMENT OF THE CASE

The facts in Appellee's statement of the case are stated correctly.

STATEMENT OF THE FACTS

On April 5, 2018, the Defendant was indicted for Manufacture and Delivery of a Controlled Substance, Penalty Group 1, Greater than Four (4) Grams and Less Than Two Hundred (200) Grams, to have taken place on August 4, 2016 (CR 3). The State sought to exclude Jerry Williams, the Defendant's brother, from the courtroom as they stated it would be appropriate to protect the security of the State's confidential informant witness (RRv3 5:5-15). This was granted over defense counsel's objection that this violated the Defendant's right to an open trial. Specifically, trial counsel objected:

MR. PEREZ: Judge, defense would have to object. Number one, the State has not provided the Court any evidence of this information that allegedly would cause the witness to be in fear of testifying or intimidated of -- intimidated. I believe the caselaw says that the State has to provide specific facts to support that notion and, at this point, they've provided none. Therefore, their argument at this point is conclusory. Second, Judge, I would object on the basis that one of the ways the Jury evaluates the credibility of a witness is by observing them on the witness stand, observing their behavior, their body language, their eye contact, their mannerisms and that is meant, in my opinion, to be tested with the defendant obviously confronting her accuser, but also the -- the idea is that the witness is making his claims in open court subject to being observed by whoever is in open court. I think to exclude people from the courtroom would essentially give the witness the ability to testify in a consequence-free environment without -- essentially without having to worry about -- let me rephrase. Basically, if the witness is able to

testify in a closed environment, I think that gives him an advantage over any other witness and I think that advantage prejudices my client, so I -- I would respectfully have to object.

The Defendant was found guilty by a jury and was then sentenced by the Court to twenty (20) years in the Institutional Division of the Texas Department of Criminal Justice. An unverified Motion for New Trial was filed on November 1, 2018, which was overruled by operation of law (CR 57-58). A notice of appeal was timely filed on November 1, 2018. (CR 55-56). Appellate counsel was appointed to Defendant on November 6, 2018 (CR 67). The Fourth Court of Appeals reversed the conviction of the Appellant on May 20, 2020 and remanded for new trial.

ARGUMENT

Issue 1: The trial court abused its discretion in excluding family members from the courtroom and denying the Defendant her right to public scrutiny

The State in Appellee's Brief asks this Court to overturn its own precedent in *Lilly v. State*, 365 S.W.3d 321, 331 (Tex.Crim.App. 2012) and adopt a new standard as it related to open courts in the State of Texas. Appellant requests that this Court decline to follow this new standard, and to instead apply the law as currently set out by this Court.

Article 1, sec. 13 of the Texas Constitution reads:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

As the Fourth Court of Appeals noted, to close court proceedings over a defendant's objection, (1) the party seeking closure must advance that the closure is necessary to protect a substantial interest that is likely to be prejudiced; (2) the closure must be no broader than necessary; (3) the trial court must consider all reasonable alternatives to closing the courtroom; and (4) the trial court must make findings adequate to support the closure. *Waller v. Georgia*, 467 U.S. 39, 41, 43-44 (1984). *Lilly v. State*, 365 S.W.3d 321, 328 (Tex. Crim. App. 2012).

The State seeks to argue that the closure of the Defendant's trial was justified as there was a fear of witness intimidation. However, as the Fourth Court of Appeals correctly notes, this Court has expressly and explicitly held that there must be a specific finding of fact related to that danger. See *Lilly*, 365 S.W.3d at 329; *State v. Steadman*, 306 S.W.3d 499, 506 (Tex.Crim.App. 2012). In this trial, the Court made no such express findings, instead holding simply that there was a possibility of intimidation. As trial counsel properly noted

MR. PEREZ: Judge, defense would have to object. Number one, the State has not provided the Court any evidence of this information that allegedly would cause the witness to be in fear of testifying or intimidated of -- intimidated. I believe the caselaw says that the State has to provide specific facts to support that notion and, at this point, they've provided none. Therefore, their argument at this point is conclusory. Second, Judge, I would object on the basis that one of the ways the Jury evaluates the credibility of a witness is by observing them on the witness stand, observing their behavior, their body language, their eye contact, their mannerisms and that is meant, in my opinion, to be tested with the defendant obviously confronting her accuser, but also the -- the idea is that the witness is making his claims in open court subject to being observed by whoever is in open court. I think to exclude people from the courtroom would essentially give the witness the ability to testify in a consequence-free environment without -- essentially without having to worry about -- let me rephrase. Basically, if the witness is able to testify in a closed environment, I think that gives him an advantage over any other witness and I think that advantage prejudices my client, so I -- I would respectfully have to object.

As the Fourth Court of Appeals held, the record in this cause demonstrates that the trial court closed the courtroom to Jerry Williams, the Appellant's brother, during the testimony of the confidential informant. As the Fourth Court of Appeals noted: "The exclusion of even a single person from court proceedings can violate a person's Sixth Amendment right to a public trial." *Turner v. State*, 413 S.W.3d 442, 449 (Tex. App.—Fort Worth 2012, no pet.); *Woods v. State*, 383 S.W.3d 775, 781 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd) ("The exclusion of a specific person or group, even if only temporary, constitutes a partial closure.").

Finally, The State seeks to argue that the closure of the Defendant's brother in the courtroom was not a true closure, as he was given the opportunity to observe via monitor. However, there is law or statute in effect at the time of this closure that allowed for discrimination in the method of viewing the court proceedings. There is no rational basis to state that one person may not attend a proceeding in the same manner or method of the rest of the population, absent the State establishing there is a substantial interest that is likely to be prejudiced. In this case, the State failed to meet that burden at the trial court level.

April Williams's trial was not open to the public and the trial court failed to justify that closure. Therefore, the decision of the Fourth Court of Appeals should be affirmed.

Issue 2: The Fourth Court of Appeals failed to consider Appellant's other grounds for appeal, either of which would have also resulted in reversal of the verdict.

There are additional errors in this case which require reversal. First, the Court abused its discretion by not permitting the affirmative defense of duress to be presented before the jury. A Defendant is entitled to a charge on any defensive theory, including duress, raised by the evidence, whether it is "strong or weak, unimpeached or contradicted." Defense counsel procured sufficient testimony from the Defendant that she was in imminent fear for her life and/or serious bodily injury.

A Defendant is entitled to an instruction on every issue raised by the evidence. *Bell v. State*, 693 S.W.2d 434, 442 (Tex.Crim.App. 1985). A Defendant is entitled to a charge on any defensive theory, including duress, raised by the evidence, whether it is "strong or weak, unimpeached or contradicted." *Hayes v. State*, 728 S.W.2d 804, 807 (Tex.Crim.App.1987).

Tex. Pen. Code § 8.05 reads:

(a) It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

(b) In a prosecution for an offense that does not constitute a felony, it is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force.

(c) Compulsion within the meaning of this section exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

(d) The defense provided by this section is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

(e) It is no defense that a person acted at the command or persuasion of his spouse, unless he acted under compulsion that would establish a defense under this section.

At the 103 hearing, the Defendant testified at length that she was forced into drug dealing under threat of imminent death or serious bodily injury. The Defendant testified as to prolonged and severe mental and physical abuse at Michael Vanburen's hands. She stated that Michael Vanburen routinely beat her (RRv3 81:4-8). She testified that he also loosened the tire on her vehicle on vehicle so that she wrecked the vehicle, and then that he bragged about it (RRv3 81:14-20). She further testified that he had struck her vehicle repeatedly with his vehicle (RRv3 82:10-15). The Defendant also testified that Michael Vanburen had threatened to kill her during the pendency of the trial (RRv3 84:13-21). As it related to imminent serious bodily injury or death, the defendant testified that, RRv3 86:22-87:4:

MR. PEREZ: Were you fearful of him at this time?

MS. WILLIAMS: Very much so.

MR. PEREZ: Did you feel like you had to do what he said or else there would be consequences?

MS. WILLIAMS: Yeah. I mean, there was no arguing with him. Like, he didn't care if you were in public or in church, or on camera. He's going to do whatever he saw fit at that moment, if you disobeyed or bugged his system.

She further testified that, even though Michael Vanburen was incarcerated, that he was watching the Defendant and giving orders related to drug dealing to people not incarcerated, RRv3 88:4-25:

MS. WILLIAMS: Well, I had Charles right there making sure that his business was still taking place while he was in there, watching over me. I mean, there was not much I could do.

MR. PEREZ: So this Charles person was watching Michael's business while he was locked up?

MS. WILLIAMS: Yes. Charles actually stayed diagonally across from us.

MR. PEREZ: Okay. Was it possible for you to disassociate yourself from this group?

MS. WILLIAMS: No, sir.

MR. PEREZ: Do you have an opinion as to what would have happened if you would have tried to do that?

MS. WILLIAMS: I would like to believe that because him and my brother are good friends that he would never intentionally kill me, and that's always been his emotion getting the best of him. But, I mean, I know I could have been hurt at any time for the simple fact I had already had a pending case hanging over my head. So I was being watched so closely because everybody was worried that I was going to go in there and let the -- let the Courts know what was actually going on.

She later testified at to the specific threat, RRv3 97:14-98:5:

MR. PEREZ: Was there no specific threat on this particular day; is that what I understand?

MS. WILLIAMS: I mean --

MR. PEREZ: Just yes or no and then I'll ask you a follow-up question.
MS. WILLIAMS: Like if he -- a threat, yes, but not one that where he said, I'm going to kill you, because it was over the phone from the jail, and he's smarter than that.
MR. PEREZ: Okay. So what threat was there then?
MS. WILLIAMS: You know what I'll do to you when I get out.
MR. PEREZ: Was that said to you –
MS. WILLIAMS: Yes, that was said.
MR. PEREZ: -- or was that implied to you?
MS. WILLIAMS: No. That was said.
MR. PEREZ: Okay. How was that said?
MS. WILLIAMS: Over the phone.

The testimony elicited by defense counsel was sufficient to allow the issue to be presented to the jury and this issue was briefed by Appellant in her brief to the Fourth Court of Appeals. It was never ruled on by the Court.

Second, the State elicited from its own witness testimony that the Defendant was a drug dealer with whom he has several previous interactions. If evidence of prior bad acts is not relevant apart from supporting an inference of character conformity, it is absolutely inadmissible under Rule 404(b). The trial court abused its discretion in allowing these prior bad acts into evidence. Because the trial court abused its discretion and admitted evidence that violated the Rules of Evidence, and because the Defendant was harmed by this error, the conviction should be overturned.

During its examination of the confidential informant in the case, the State sought to implicate April Williams as a drug dealer. Defense counsel properly preserved the objection, RRv3 12:23-13:9:

MS. HINES-WRIGHT: And prior to August 4, 2016, had you ever bought drugs from April Williams?

JOSH BROWN: Yes. Have I bought it before?

MS. HINES-WRIGHT: Yes.

MR. PEREZ: Judge, I'm going to object. That's 404b.

MS. HINES-WRIGHT: It's not 404, Your Honor. We have to establish how he would even have a relationship with April Williams. Jaime Diaz testified that you can't send someone in to a random person to buy narcotics. We're just establishing their relationship.

THE COURT: Overruled.

Texas Rule 404(b) reads as follows:

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

"Establishing a relationship" is not a permissible exception to Texas Rule of Evidence 404(b). The purpose for which the State sought to introduce the evidence was to demonstrate that the Defendant was a drug dealer, which is exactly the sort of character evidence the Rule was designed to protect against the admission. It is well established in the jurisprudence of this state that an accused person may not be tried for

collateral offenses or for being a criminal generally. *Parks v. State*, 746 S.W.2d 738 (Tex.Crim.App. 1987); *Williams v. State*, 662 S.W.2d 344 (Tex.Crim.App. 1984); *Albrecht v. State*, 486 S.W.2d 97 (Tex.Crim.App. 1972).

Evidence of extraneous offenses is by nature inherently prejudicial and carries the additional danger of forcing a criminal defendant to defend himself against an implied charge of having a propensity to commit crimes rather than the specific charge the State has brought against him. *Elkins v. State*, 647 S.W.2d 663 (Tex.Crim.App. 1983); *Bates v. State*, 643 S.W.2d 939 (Tex.Crim.App. 1982). The failure to grant a mistrial and to allow to fundamental egregious error denies a Defendant a fair trial. *Almanza v. State*, 686 S.W.2d 157 (Tex.Crim.App.1984).

The United States Constitution mandates that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. In Texas, “[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.” Tex. Const. Art. I, § 19. The admission of extraneous offenses is a violation of due process, and an egregious one. Extraneous acts are generally inadmissible at the guilt/innocence stage of a trial. Tex. R. Evid. 404(b). A Defendant is

"entitled to be tried on the accusations made in the State's pleading and he should not be tried for some collateral crime or for being a criminal generally." *Wilkerson v. State*, 736 S.W.2d 656, 659 (Tex.Crim.App. 1987).

The objection of defense counsel should have been sustained and a mistrial granted, and this issue was briefed by Appellant in her brief to the Fourth Court of Appeals. It was never ruled on by the Court.

The Fourth Court of Appeals did not reach a decision as to these grounds as it found that the denial of an open courtroom disposed of the entire case. As such, this Court should uphold the reversal of the Appellant's conviction on these grounds. In the alternative, this Court should remand this case to the Fourth Court of Appeals for a ruling on these other two points of error.

PRAYER

The Appellant respectfully requests that this Honorable Court affirm the decision of the Fourth Court of Appeals, and that the that judgment of the trial court be reversed and this case be remanded for a new trial. In the alternative, Appellant requests that this Court remand this case to the Fourth Court of Appeals for a ruling on the other points of error.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I hereby certify that a true, correct, and complete copy of the foregoing was served on all counsel of record via e-filing and via facsimile (830-379-949) to Christopher M. Eaton of the Guadalupe County Attorney's Office in accordance with the Texas Rules of Appellate Procedure on this day, November 23, 2020.

/S/ John Michael Lamerson
JOHN MICHAEL LAMERSON

RULE 9.4(I) CERTIFICATION

In compliance with the Texas Rule of Appellate Procedure 9.4(i)(3), I certify that the number of words in this brief, excluding those matters listed in Rule 9.4(i)(I), is **3,798** per the Word software used to write this document.

/S/ John Michael Lamerson
JOHN MICHAEL LAMERSON

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